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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/535,134	01/17/2006	Klaus Abraham-Fuchs	32860-000885/US	3591
30596 7590 09/18/2007 HARNESS, DICKEY & PIERCE, P.L.C. P.O.BOX 8910 RESTON, VA 20195			EXAMINER SUN, XIUQIN	
			ART UNIT 2863	PAPER NUMBER
			MAIL DATE 09/18/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Advisory Action Before the Filing of an Appeal Brief	Application No. 10/535,134	Applicant(s) ABRAHAM-FUCHS ET AL.	
	Examiner Xiuqin Sun	Art Unit 2863	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 20 August 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.

b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because

(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);

(b) ☐ They raise the issue of new matter (see NOTE below);

(c) ☒ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or

(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5. ☐ Applicant's reply has overcome the following rejection(s): _____.

6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____.

Claim(s) objected to: _____.

Claim(s) rejected: 1-34.

Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.

12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____

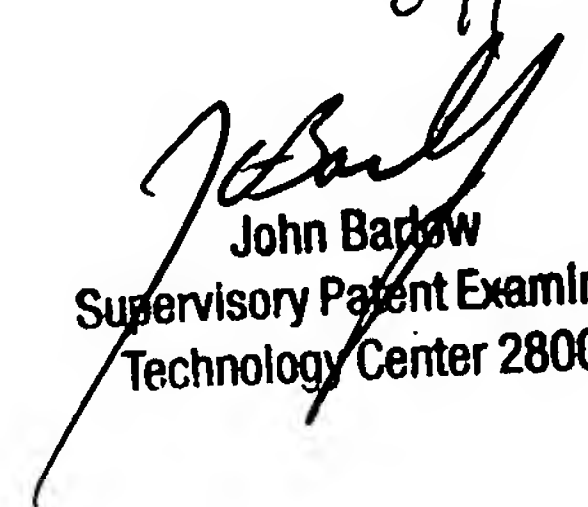
13. ☐ Other: _____.

Continuation of 11. does NOT place the application in condition for allowance because: Applicant's arguments received 08/20/07 with respect to claims 1-8, 10-22, and 30-34 have been considered but they are not persuasive. Applicant argued that "Yamazaki fails to disclose 'representing at least a part of the chain of the analysis process by specifying one of the basic sub-processes, per sub-processes of the part of the chain, using at least one control parameter and at least one associated threshold value', as required by claim 1", because "Yamazaki does not allow for identifying a specific sub-process which may be causing an error because Yamazaki does not disclose sub-processes specified by a control parameter and an associated threshold value". The argument is not persuasive. The examiner's position is that, giving the claim the broadest reasonable interpretation, Yamazaki et al. (0043 and 0161) do disclose or teach or suggest this limitation. In particular, it is deemed that Yamazaki's simulation of the chemical process performed using an operating mechanism and the output of the simulation results including a display of temperatures, pressures, pH, concentrations and compositions of the reaction system by single point or multipoint indeed disclose or teach or suggest "representing at least a part of the chain of the analysis process by specifying one of the basic sub-processes, per sub-processes of the part of the chain, using at least one control parameter", and the subsequent analysis simultaneously performed to determine the pH from the added FeCl₃ amount, temperature and pressure inherently indicates a threshold value that is associated with said step of representing.

Applicant further argued that "Ertel does not disclose 'comparing measurement values with associated threshold values for the quality control in a chronological order of the occurrence of the sub-processes in the part of the chain in the course of the analysis process' as required by claim 1". The argument is not persuasive either. It is the examiner's position that, giving the claim the broadest reasonable interpretation, Ertel (col. 5, lines 35-39; col. 11, lines 50-55; col. 15, lines 11-20; col. 26, lines 61-68; col. 30, lines 13-19; cols. 35-36, lines 50-8) does disclose or teach or suggest this limitation.

Applicant further argued that "one skilled in the art would not look to combine Yamazaki with Ertel". This argument is not persuasive. The examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). The examiner further recognizes that the test for obviousness is not whether the features of a second reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981). In this case, it is deemed that all the cited prior art references are in the same field of endeavor or solving the same problem: carrying out quality control for an analysis process of a group of related analysis process including a chain of sub-processes (Yamazaki et al., Abstract; Ertel Abstract). The examiner considers that the Yamazaki reference is not clear about that said comparison is in a chronological order of the occurrence of the sub-processes in the part of the chain in the course of the analysis process. The combination of Ertel's teaching of this limitation with the invention of Yamazaki reads on the claims. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the invention of Yamazaki et al. by including the data comparison technique as taught by Ertel in order to monitor the overall performance of the data quality control process and performance trends over time as well as conduct more detailed case-specific quality control surveillance (Ertel, Abstract and col. 35, lines 50-60). The combination is therefore proper. The rejections stands.

The rest of the Applicant's arguments are reliant upon the issue discussed above, and are deemed to be non-persuasive as well for the reasons provided above.

XS
09/04/07

John Barlow
Supervisory Patent Examiner
Technology Center 2800